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FACT SHEET

Broadband Technology Opportunities Program Nondiscrimination and Interconnection Obligations

Overview

One of the fundamental principles of the Broadband Technology Opportunities Program (BTOP) is open access. This fact sheet provides initial guidance to help infrastructure grant recipients comply with the nondiscrimination and interconnection requirements for their awards. NTIA believes that the relationships between recipients and their wholesale and retail customers should be driven by market forces. NTIA's primary role is to ensure that recipients comply with the terms and conditions of their grant awards. NTIA takes seriously grantees' demonstrated commitments and ability to offer open access and will closely monitor grantees' performance in this area.

Applicability of Requirements to Subrecipients and Other Parties

Importantly, BTOP's nondiscrimination and interconnection requirements apply to grant recipients and subrecipients. In certain cases, these obligations also may apply to contractors, subcontractors, purchasers of indefeasible rights of use (IRUs)/dark fiber, or other parties engaged to deploy or operate the network facilities that are part of the project. NTIA expects recipients to ensure that all relevant entities are familiar with and in compliance with the nondiscrimination and interconnection requirements. As discussed below, these requirements do not apply to existing network facilities or equipment of recipients, subrecipients, and other parties.

Interconnection

A. *Notice of Funding Availability (NOFA) Requirements*

- **Interconnection:** Recipients shall provide access to BTOP-funded facilities at any technically feasible point along the network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of the recipient's facilities to a requesting party's facilities for the exchange of traffic. In addition, recipients shall connect to the public Internet directly or indirectly and provide requesting parties with an ability to connect to the Internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory.
- **Negotiate in Good Faith:** Recipients shall negotiate in good faith with all requesting parties (i.e., public, private, non-profit, or other parties) making a bona fide request for interconnection or wholesale services.

B. *Guidance*

1. Interconnection and Collocation

- a. **Interconnection:** BTOP grantees should be prepared to: (a) wholesale a direct connection that it has built to the customer (i.e., loop or lateral); and (b) provide transport services to a last mile provider that is serving the customer (e.g., backhaul, Internet access). Recipients should make all reasonable efforts to allow all requesting parties to interconnect with their facilities regardless of the business model or purpose of the requestor. The requirement to offer interconnection at any technically feasible point along the network includes all points of interconnection set forth in a recipient's approved application, including splice points and mid-span.





- b. Collocation:** Recipients should allow collocation by interconnecting parties, on a first-come, first-served basis, in any equipment or facilities funded by BTOP, where and when possible. Recipients should expect customers to request a variety of collocation services, including secured space separated from the owner's equipment, 24-hour access, escorted or unescorted access, and AC and/or DC.
- c. Rates and Terms:** Rates and terms for interconnection shall be reasonable and nondiscriminatory. If a party requests to interconnect with BTOP-funded facilities at a location where no point of interconnection currently exists, the requesting party should bear any reasonable cost to improve the facilities to allow for interconnection. If a party requests to collocate with a recipient where BTOP funds have been used to acquire, expand, or upgrade collocation space, the recipient should allow the requesting party to collocate at reasonable and nondiscriminatory rates.

2. Access to Wholesale Broadband Services and Dark Fiber

- a. Rates and Terms:** Recipients should offer wholesale broadband services at rates and terms that are reasonable and nondiscriminatory. Many recipients set forth wholesale pricing in their applications and, as such, those rates will be presumed reasonable and nondiscriminatory.
- b. Types of Service:** Customers will expect certain wholesale services to be provided including, but not limited to, local transmission services, transport, and dedicated Internet access services.
- c. Quality of Service:** Customers will expect that there will be certain quality of service levels guaranteed as part of their wholesale agreements. Agreements with requesting parties should contain service level agreements, service level guarantees, and standards, including service guarantees and standards related to jitter, latency, delivery ratio, and service availability.
- d. Provisioning and Installation:** Customers will expect that agreements for wholesale services will contain provisioning and installation intervals and that these intervals will be reasonable and nondiscriminatory. Customers will expect provisioning and installation timeframes that are consistent with industry standards and practice, for example, 30 days for the provisioning and installation of on-net circuits.
- e. Repair and Maintenance:** Customers will expect that agreements for wholesale services will include provisions for repair and maintenance, as well as service outage credits. Customers will expect repair and maintenance timeframes that are consistent with industry standards and practice and that recipients have established Mean Times to Repair for all offered services, which should be based on the nature of the service issue (i.e., outage, noise on the line, etc.).
- f. Dark Fiber:** To the extent that a recipient's business plan involves offering dark fiber, the recipient should consider making available various information to requesting parties including, but not limited to, route maps, interconnection points, splice points, and type of fiber.

3. Access to Information

- a. Routes:** Recipients should provide up-to-date information to parties making bona fide requests regarding the location of grant-funded network routes, including routes containing dark fiber. For example, the information could be a high-level map of the BTOP network that identifies city pairs connected to the network.
- b. Points of Interconnection (POIs):** Recipients should provide up-to-date information to parties making bona fide requests regarding the location of the POIs associated with the grant-funded facilities and whether capacity exists to permit interconnection. Regarding location, the information should identify the census block within which the POI resides and the related community, town, or





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city and Stats of the POI. Recipients may require execution of a non-disclosure agreement prior to releasing this information.

- c. **Requests for Service:** Recipients should maintain a standardized, easily accessible method for parties to make inquiries and request service. Recipients should establish a standard policy for responding to requests within a reasonable period of time, for example, 10 days. In addition, the NOFAs require that recipients shall allow for a reasonable time for negotiation, not to exceed 90 days, and adhere to the dispute resolution process set forth in the NOFAs.

4. Access to Agreements

- a. **Standard Terms and Conditions:** Recipients should maintain a publicly available (i.e., displayed on a website) up-to-date list of standard terms and conditions provided to all network users, including partners and sub-recipients. Maintaining a publicly available list of standard terms and conditions does not alleviate a recipient of its responsibility to enter into commercial negotiations with a customer upon a bona fide request.
- b. **Disclosure of Agreements:** Copies of all service agreements should be made available to NTIA upon request.

Nondiscrimination

- **Internet Policy Statement:** Recipients shall adhere to the following principles that were set forth in the Federal Communications Commission (FCC) Internet Policy Statement (FCC 05-151, adopted August 5, 2005) or any subsequent ruling or statement:
 1. Consumers are entitled to access the lawful Internet content of their choice.
 2. Consumers are entitled to run applications and services of their choice, subject to the needs of law enforcement.
 3. Consumers are entitled to connect their choice of legal devices that do not harm the network.
 4. Consumers are entitled to competition among network providers, application and service providers, and content providers.
- **Nondiscrimination:** Recipients shall not favor any lawful Internet applications and content over others.
- **Network Management:** As required by the NOFAs, recipients shall display any network management policies in a prominent location on the service provider's Web page and provide notice to customers of changes to these policies as well as describe any business practices or technical mechanisms they employ other than standard best efforts Internet delivery to: allocate capacity; differentiate among applications, providers, or sources; limit usage; and manage illegal or harmful content.

Exceptions to the Interconnection and Nondiscrimination Obligations

- **Existing Network Arrangements:** The nondiscrimination and interconnection requirements do not apply to the recipient's existing network arrangements. Note, however, that if a recipient contributes existing facilities to a project to satisfy the matching requirement, such facilities specifically identified as an in-kind contribution will be subject to the nondiscrimination and interconnection obligations because they become





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part of the recipient's budget and project. Further, recipients have an affirmative responsibility to connect to the public Internet even if doing so involves traversing portions of their networks that are not funded by BTOP.

- **Law Enforcement and Reasonable Network Management:** Consistent with the FCC's Internet Policy Statement, the interconnection and nondiscrimination requirements are subject to the needs of law enforcement and reasonable network management. This means that recipients may employ generally accepted technical measures to provide acceptable service levels to all customers, such as application-neutral bandwidth application and caching. NTIA will determine the reasonableness of network management techniques by consulting applicable rules and findings established by the FCC.
- **Public Safety:** For single-purpose 700 MHz public safety networks, the "needs of law enforcement and reasonable network management" exception effectively exempts 700 MHz public safety recipients from compliance with the nondiscrimination and interconnection obligations. Public safety recipients will have the ability to deploy secure private networks and prioritize traffic as they deem necessary. However, to the extent that the network is dual use, the nondiscrimination and interconnection obligations will apply to the non-public safety components of the network.
- **Managed Services:** Keeping in mind the preference for open access and the government's intent that the benefits of BTOP-funded projects should extend as far as possible, in compelling circumstances infrastructure grant recipients may offer managed services such as telemedicine, distance learning, and virtual private networks that use private network connections for enhanced quality of service rather than traversing the public Internet.

